IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI,

THE HON'BLE MR JUSTICE S.ANANDA REDDY,

And

THE HON'BLE MR. JUSTICE L. NARSIMHA REDDY

W.P.No.15225 of 1991,

W.P.Nos.6099, 10810, 12033, 16095, 17523, 17525 of 1992,

W.P.No.11662 of 1993, W.P.No.1176 of 1994,

W.P.No.12930 of 2002, W.P.Nos.16515, 22959 of 2003,

and

W.P.No.3253 of 2004

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WRIT PETITION NO : 15225 of 1991

Between:

M/s Abmica Lamp House,
Rajahumndry, rep.by its Managing Partner S.Anantha Ram.

..... PETITIONER

AND

1 The Commercial Tax Officer (Int) -I Enforcement , Commercial

Taxes Complex, Nampally, Hyderabad.
2 The Commercial Tax officer Alcot garden,
Rajahmundry, East Godavari district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st Respondents in collecting cheques on 30/07/91 and 31/07/91

for
Rs. 48,361/- and Rs. 25,000/- towards the tax and C-fees respectively as illegal and without juridication and direct the respondents to refund the amount of Rs. 73,361/- to the petitioner forthwith together with interest at 18% per annum.

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.NO. 6099 OF 1992:

Between:

M/s.Shankar Agencies Rep. by its Proprietor Sri Ratan Chand Rajahmundry.

..... PETITIONER

AND

1 The Commercial Tax Officer (Int) kakinada.
2 The Deputy Commercial Tax Officer Rangireejupeta , Rajahmundry.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue of writ of Mandamus directing the respondents to refund the amount of Rs.31,098/- collected as tax , without authority of Law and also issue writ of Certiorari or any other appropriate writ or order or direction quashing the order Dt: 2-12-1991 passed by the 1st respondent and direct the respondent to refund the C-fee of Rs.31,098/- collected based on inspection on 12-11-1991 or in any event direct the respondents to refund the excess compounding fee of Rs.28,098/- and pass such other order or orders.

Counsel for the Petitioner : MR.S.DWARAKANATH

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 10810 of 1992:

Between:

M/s.Nataraj Electricals, Rep. by its Managing Partner Mr.M.K.Mohan Rao, Vijayawada.

..... PETITIONER

AND

1 The Commercial Tax Officer (Int)
No.1 (Enft) , Hyderabad.
2 The Commercial Tax Officer
Kothapet , Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order directing the respondents to refund the Tax of Rs.71,139/- and compounding fees of Rs.25,000/- collected from the petitioner on 1st and 2nd August , 1991 respectively and consequently set aside the order of the 1st respondent in No.14/1991-92 , dt: 2-8-91 levying 'C' fees of Rs.25,000/- or in the alternative declare that collection of excess "C' fee of Rs.22,000/- is illegal and direct the respondents to refund the excess collection of 'C' fees of Rs.22,000/- and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondents : GP FOR COMMERCIAL TAX

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 12033 of 1992:

Between:

M/s.Vijayalakshmi General Traders, Tenali,

Rep by its Partner K.Subba Rao., S/o. Kotaiah, R/o.Tenali, Guntur Dist.

..... PETITIONER

AND

1 Commercial Tax Officer
Gandhi Chowk , Tenali , Guntur Dist.
2 Spl.Assistant Commercial Tax Officer
Gandhi Chowk , Tenali , Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction , declaring the collection of 'C' fees of Rs.17,008/- on 18-11-88 and 24-11-88 and the proceedings in O.R.NII/88-89 Dt: 25-11-88 as illegal and without jurisdiction and direct the respondents to refund the same forthwith to the petitioner along with interest at 18%P.A or in the alternative declare that maximum 'C' fees leviable is only Rs.3,000/- and direct the respondents to refund the excess amount of

Rs.14,008/- with 18% interest P.A and pass such other order or orders.

Counsel for the Petitioner : MR.S.DWARAKANATH

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 16095 of 1992:

Between:

M/s.Maheswari Jewellery Mart, Vijayawada-1,

Rep by its partner Mr.Praveen Kumar Saboo, Sivalayam Street , Vijayawada-1.

..... PETITIONER

AND

Commercial Tax Officer (Int).
Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring that the action of the respondent in collecting Rs.5,223/- towards penalty and Rs.1,000/- towards compound fees by order Dt:17-8-89 as illegal and arbitrary and direct the respondents to refund the said amounts.

Counsel for the Petitioner: MR.P.SRINIVAS REDDY

Counsel for the Respondent: GP FOR COMMERCIAL TAXES

W.P.No. 17523 of 1992:

Between:

Punjab Automobiles, Rajahmundry,

Rep by its Proprietor . Ajit Singh Kapur
Rajahmundry.

..... PETITIONER

AND

1 The Commercial Tax Officer, (Int.)
Kakinada.
2 The Assistant Commercial tax Officer

Aryapuram , Rajahmundry.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order direction declaring the action of the respondents in collecting tax of Rs.18,020/- and 'C' fees of Rs.20,000/- on 14-11-1991 as illegal and arbitrary and direct the respondents to refund the said amounts forthwith to the petitioner and set aside the proceedings of the 1st respondent in O.R.No.65/91-92, Dt: 14-11-1991 or in the alternative declare that collection of excess 'C' fees as illegal and direct the respondents to refund the excess collection to the petitioner forthwith and pass such other order or orders.

Counsel for the Petitioner:MR.P.SRINIVAS REDDY

Counsel for the Respondents : GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 17525 of 1992:

Between:

M/s.Syam Enterprises, Rep by its Proprietor Mr.K.Ch.Anka Rao
9-11-15 , Kakumanuvari Street, Kothapet Guntur-522 003.

..... PETITIONER

AND

Asst. Commercial tax Officer (Int)
Puttur , Chittoor Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction declaring the action of the respondent in collecting tax of Rs.22,640/- & 'C' fees of Rs.15,000/- as illegal and arbitrary and direct the respondent to refund the said amounts forthwith to the petitioner and consequently set aside the proceedings of the respondent in Rc.No.CTIS279S91 Dt: 3-8-92 levying C-fees of Rs.15,000/- and direct the respondent to refund the said amount or in the alternative to declare that collection of excess C-fees of Rs.12,000/- is illegal and direct the respondent to refund the excess collection to the petitioner forthwith and pass such other order or orders.

Counsel for the Petitioner : MR.P.SRINIVAS REDDY

Counsel for the Respondent : GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 11662 of 1993:

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Between:

M/S Vikas Oil Industries Maharaj Gunj, Hyderabad

Rep.by its Partner Bajranglal Agarwal,

son of late Dulichand Agarwal

..... PETITIONER

AND

The Assistant commissioner Commercial Taxes, Intelligence No. III (Enforcement Wing). Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or direction, directing the respondent to refund the tax of Rs. 42,233/- and compounding fees of Rs. 42,233 collected on 24/07/93 from the Petitioner and set-aside the order dt. 24/07/93 passed by him in levying compounding fees of Rs. 42,233/- or in the alternative declare that the collection of excess compounding fees of Rs. 39,233/- is illegal and further direct him to refund the same forthwith to the petitioner

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondent: GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No.1176 of 1994:

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Between:

M/s Ramcharan Oil Industries
15-2-449/7, Kishan Gunj Hyderabad- 12
rep.by its Parner Balmukund Agarwal

..... PETITIONER

AND

1 Asst. Commissioner (CT) Int.No.II Enforcement Wing,Hyderabad.
2 The State of A.P., rep. by its Secretary
Revenue Department Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ order or direction declaring the collection of compounding fee of Rs.19,707/- on 24/07/1993 by the respondent vide CCT's Ref Enf.Case No.12/93-94, Dt.24/7/1993 is illegal, arbitrary and without jurisdiction and direct the authorities to refund the compounding fee forthwith to the petitioner and pass such other order.

Counsel for the Petitioner : MR.TEJ PRAKASH TOSHNIWAL

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

Mr. A.V.Krishna Koundinya

Mr. K.Raji Reddy, Spl.SC for C.T.

W.P.No. 12930 of 2002:

Between:

Sree Meenakshi Cashew Company.
K.T. Road, Palasa, Srikakulam District, rep. by its Proprietor-

Mr. T. Jayaram, S/o. Ramkumar, R/o. Palasa, Srikakulam Dist.

..... PETITIONER

AND

The Assistant Commercial Tax Officer,
Kasibugga Circle, Srikakulam Dist.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of mandamus or any other appropriate writ or order declaring the action of the respondent in collecting the tax of Rs. 17,920/- and compounding fee of Rs. 35,840/- on 18-5-2002, without passing any order/ proceeding as contemplated under section 32 of the Andhra Pradesh General Sales Tax Act as illegal, arbitrary, and without jurisdiction and consequently direct the respondent to refund the excess compounding fee of Rs. 32,840/- collected illegally by force.

Counsel for the Petitioner : MR.SHAIK JEELANI BASHA

Counsel for the Respondent : SPL GP FOR TAXES

W.P.No. 16515 of 2003:

Between:

Sri Laxmi Sweets., Kasibugga., Srikakulam District rep.by its prop.
Gudia Dandasi Sahu s/o Late Appanna Saahu.,
aged 40 years., r/o.Palasa., Srikakulam District.

..... PETITIONER

AND

The Deputy Commercial Tax Officer., Tekkali Circle., Srikakulam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ or order declaring the action of the Respondent in collecting the tax of Rs.13,414/- and compounding fee of Rs.26,828/- on 25-9-2002, without passing any order/ Proceeding as contemplated under section 32 of the Andhra Pradesh General Sales Tax Act as illegal, arbitrary, and without jurisdiction and consequently direct the respondent to refund the excess compounding fee of Rs.23,828/- collected illegally by force

Counsel for the Petitioner:MR.SHAIK JEELANI BASHA

Counsel for the Respondent : SPL GP FOR TAXES

W.P.No. 22959 of 2003:

Between:

M/s. Sri Kalki Industries, 1-3-21/37, Salt Godown St., Vidyadharapuram, vijayawada - 2, rep: by its Partner
Mr.Ch.Rajagopal

..... PETITIONER

AND

The Commercial Tax Officer, Gudivada Circle, Krishna District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in he nature of Writ of Certiorari or any other appropriate writ or direction quashing the order of the Respondent dt:16-10-2003 in O.R.No.1/2002-03 in collecting the tax of Rs.25,092/- and compounding fee of Rs.50,184/- as arbitrary, contrary to Law and without jurisdiction as contemplated under Section 32 of the Andhra Pradesh General Sales Tax Act, also as per G.O.Ms.No.625, dt:31-7-1996 and also in violation of principles of natural justice and consequently direct the respondent to refund the compounding fee of Rs.50,184/- collected illegally by force.

Counsel for the Petitioner:MR.SHAIK JEELANI BASHA

Counsel for the Respondent : GP FOR COMMERCIAL TAXES

Spl.G.P. for Taxes

Mr. A.V.Krishna Koundinya, Spl.SC for CT

A N D

W.P.No. 3253 of 2004:

Between:

M/s.Sri Lakshmi Venkateswara Decorticating & Oil Mill, Konakondla, Anantapur District, rep., by its Partner Sri L.Laxmanudu

..... PETITIONER

AND

1 The Commercial Tax Officer (Audit), o/o the Dy. Commissioner of Commercial Taxes, Kurnool.
2 The Deputy Commissioner of Commercial Taxes, Kurnool Division, Kurnool.
3 The Asst. Commercial Tax Officer, Uravakonda, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent in collecting an amount of Rs.4,51,014/- towards compounding fee vide receipt No.0983083, dated 24-1-2004 and also a further amount of Rs.4,51,014/- through four post-dated cheques from the petitioner, as illegal, contrary to provisions of law, unjustified, besides being violative of principles of natural justice and consequently, direct the 2nd respondent to refund the amount of Rs.4,51,014/- collected from the petitioner towards compounding fee

Counsel for the Petitioner : MR.B.SRINIVAS

Counsel for the Respondents: GP FOR COMMERCIAL TAXES.

COMMON ORDER: (Per the Hon'ble Mr.Justice S.Ananda Reddy)

These writ petitions are filed by the dealers registered under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 carrying on various businesses, assailing the action of the Vigilance Wing of the sales tax department, and praying for the issue of writ of mandamus declaring such action of collecting the tax as well as the compounding fee, without framing necessary assessments determining the

tax liability or passing orders, coercing the dealers for compounding the alleged offence and collecting the compounding fee on the day of inspection either through payment of cash or through post dated cheques, as illegal, and contrary to the provisions of law as well as the Judgments rendered by this Court, and consequently sought for a direction to the respondents to refund the amounts collected from the dealers with interest.

2. According to the learned counsel for the petitioners the modus operendi adopted by the department, especially by the Intelligence Wing is that they will inspect the business premises of the dealer and on the alleged irregularities found in the course of inspection they used to obtain statements from the persons, who are available at the business premises at the time of inspection by force or coercion threatening to seize the stock or close down the business and thereupon collect the tax for the alleged suppression of the sales turnover and also demand for compounding the alleged offence on the very same day and creates the record as if a show cause notice was issued and a reply was given on the same date and also passing an order accepting the offence for compounding the offence by levying the compounding fee, which is almost equivalent to the alleged tax found due on the suppressed turnover. The department officials also collect the cash if available on the spot or if it is not available they will collect post dated cheques, and thereafter there will not be any further proceedings either for assessment or otherwise. It is contended on behalf of the counsel appearing for the petitioners that this action of the department was deprecated by this Court in number of writ petitions, and in spite of it, the department did not mend its ways and has been repeating the same by forcing the dealers only to give statements, accepting the alleged irregularities or suppressed turnover and collecting the tax on the alleged suppressed turnover as well as compounding fee as if the dealer had conceded and offered for compounding. The entire exercise will be completed within a day or two at the most. The said procedure that is being adopted by the officials of the department is even contrary to the provisions of the Act and the Rules made thereunder. Therefore, the learned counsel sought for the issue of appropriate writ declaring the said action as illegal and unsustainable.

3. Counters have been filed on behalf of the respondents in some of the writ petitions supporting their action. The stand of the department is that whenever the Vigilance Cell/Enforcement Wing gets some credible information with reference to

the illegal activities indulged by the dealers for evasion of the tax, the officials of the department with proper authorization from the concerned authority inspects the entire premises, records as well as the stocks during the business hours, and wherever there is improper maintenance of the accounts or the stock was not properly recorded showing the suppressed turnover with reference to the said turnover tax was sought to be recovered, and when penal action was proposed, the dealers have come forward seeking compounding the offence in order to avoid further penal action. Therefore, the department was accepting the request of the dealers and collecting the tax as well as compounding fee in respect of the suppressed turnover. It is also the stand of the department that the department never coerced the dealers to give statements accepting the suppressed turnover or unaccounted turnover. In fact, the dealers have come forward voluntarily and have agreed for settlement of the irregularities by getting the offence compounded, apart from paying the tax. Therefore, there is no illegality or irregularity.

4. When these matters came up before a Division Bench for hearing, it was represented by the Members of the Bar that there are decisions taking different views. In view of the said representation, the Division Bench felt that it is proper to have an authoritative pronouncement by resolving the conflict if any among the decisions of this Court. Therefore, the matter was placed before the Hon'ble the Chief Justice for referring to a Larger Bench. That is how the Full Bench was constituted to hear all these matters.

5. As the facts are different in each of the case, for convenience, we refer the facts that are available in W.P.No.3253 of 2004. In this case, the petitioner is a registered dealer, engaged in the business of decorticating the groundnuts. According to the dealer, the said decorticating activity was carried on only for the benefit of the farmers, who were growing the groundnuts, and the petitioner charges only the commission or the charges for converting the groundnut kennel into seed. It is also the case of the dealer that it obtained license under Sec.7 of the A.P. (Agricultural Produce & Live Stock) Markets Act, 1966 and was submitting its returns to the Agricultural Market Committee, Uravakonda, Ananthapur District. It is also its further case that though it was also registered as a dealer under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act') before the 2nd respondent, and the registration was also being renewed from time to time, but it was not carrying on any business, purchase and sale of groundnut, and therefore,

there was no payment of any tax by the petitioner. It was specifically stated that with reference to the groundnuts, it is taxable in terms of Entry-6 of the Schedule-III of the Act and taxable at the point of the purchase by an oil miller other than a decorticating miller, and in all other cases at the point of last purchase in the State of Andhra Pradesh. Therefore, it is the case of the petitioner that the said provisions have no application as there is no purchase and sale by the petitioner. However on 23.1.2004 the respondents 1 and 2 visited the premises of the petitioner and found that the petitioner was in possession of 5,50,000 Kgs., of groundnuts and 76,320 Kgs., of groundnut seed. On the basis of the stock, the 2nd respondent without further verification of the matter, without conducting any further enquiry, and without giving even a show cause notice seeking explanation of the petitioner, highhandedly collected an amount of Rs.4,51,014/- by a cheque drawn on, Andhra Bank, Guntakal. At the same time, the 2nd respondent also obtained a statement from one person by name Krishna Murthy under threat and coercion, accepting the alleged suppressed stocks and also agreeing for compounding the alleged offence, and collected the post dated cheques towards compounding fee.

6. A counter is filed by the 1st respondent disputing and denying the allegations. It is stated that the Deputy Commissioner, Commercial Taxes, Kurnool in exercise of her powers under G.O.Ms.No.625, authorized the 1st respondent to inspect the premises of the petitioner as she received some credible information that the dealer was indulging in clandestine trade with a view to evade the sales tax and accordingly the premises was inspected on 23.1.2004. It is stated that the authorities at the time of inspection asked one Krishna Murthy, who was found at the time of inspection, to produce the books of accounts or any other registers maintained for the stocks available in the business premises, but hey failed to produce any of the books or registers. On the other hand, the said Krishna Murthy voluntarily gave a statement agreeing for compounding the offence by paying a sum equal to the tax. Therefore, the department has collected the said amount accepting the proposal for compounding the offence. It is also disputed that the departmental officials have obtained a statement by coercion or threat. Further, as it is a question of fact the same cannot be adjudicated upon in the present Writ Petition. It is also stated that the dealer has come forward offering to compound the offence, instead of

prosecution, and the department has accepted the same. Therefore, it is not open to the petitioner to question the said action.

7. From the above facts, the issue to be considered is whether the action of the departmental officials in collecting the tax as well the compounding fee on the same day of the inspection is in accordance with the provisions of the Act.

8. Before proceeding to adjudicate upon the issue it is proper to refer to the relevant provisions of the Andhra Pradesh General Sales Tax Act, 1957 and the Rules.

"**Section 12. Registration of Dealers:**

(1) Every dealer (other than casual trader) whose total turnover in any year is not less than Rs.50,000/- shall and any other dealer may get himself registered under this Act.

Section 13. Submission of return of turnover by dealer:

Every dealer who is liable to get himself registered under Sec.12, under this Act shall submit such return or returns relating to his turnover, in such manner, within such period, and to such authority as may be prescribed.

Section 14: Assessment of tax.

1. If the assessing authority is satisfied that any return submitted under section 13 is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof; but if the return appears to him to be incorrect or incomplete he shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such inquiry as he deems necessary, assess to the best of his Judgment, the amount of tax due from the dealer. An assessment under this section shall be made only within a period of four years from the expiry of the year to which the assessment relates.

1[Provided further that the period for assessment under this sub-section shall be two years for the assessments relating to the year 1999-2000 and one year for the assessment relating to 2000-2001 and 2001-2002.

(1-A) Where the return submitted by a dealer includes the turnover or any of the particulars thereof which would not have been disclosed but for an inspection of accounts, registers or other documents of the dealer made by an officer authorized under this Act before the submission of such return, the assessing authority may, after giving an opportunity to the dealer for making a representation in this behalf, treat such return to be an incorrect or incomplete return within the meaning of sub-section(1) and proceed to take action on that basis.

2(1-B)…….

2. When making an assessment to the best of Judgment under sub-section (1), the assessing authority may also direct the dealer to pay in addition to the tax assessed a penalty as specified in sub-section (8) on the turnover that was not disclosed by the dealer in his return.

3. Where any dealer liable to tax under this Act –

    i. fails to submit return before the date prescribed in that behalf, or

    ii. produces the accounts, registers and other documents after inspection, or

    iii. submits a return subsequent to the date of inspection, the assessing authority may, at any time within a period of six years from the expiry of the year to which assessment relates, after issuing a notice to the dealer and after making such inquiry as he considers necessary, assess to the best of his Judgment, the amount of tax due from the dealer on his turnover for that year, and may direct the dealer to pay, in addition to the tax so assessed a penalty as specified in sub-section (8).

4. In any of the following events, namely, where the whole or any part of the turnover of business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer, and after making such enquiry as he may consider necessary, by order, setting out the grounds therefor -

    a. determine to the best of his Judgment the turnover that has escaped assessment and assess the turnover so determined;

    b. assess the correct amount of tax payable on the turnover that has been under-assessed;

    c. assess at the correct rate the turnover that has been assessed at a lower rate;

        (cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed.

    d. Levy the licence fee after determining to the best of his Judgment the turnover on which such fee is payable;

    e. levy the registration fee that has escaped levy; or

    f. levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

        In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in sub-section (8).

(4-A) Any assessment or levy under sub-section (4) shall be made within a period of four years from the date on which any order of assessment or levy was served on the dealer.

(4-B) Before issuing any direction for the payment of any penalty under sub-section (2), sub-section (3) or sub-section (4) the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish correctly any particulars and shall make such inquiry as he considers necessary.

(4-C) The powers conferred by sub-section (4) on the assessing authority may, subject to the same conditions as are applicable in the case of that authority, be exercised also by any of the authorities higher than the assessing authority including the Assistant Commissioner (Intelligence), the Deputy Commissioner and the Joint Commissioner.

5. …

6. …

7. …

(7-A) …

8. The penalty leviable under sub-section (2), sub-section (3) or sub-section (4)

    g. shall not be less than three times but which may extend to five times the tax or the fee due in a case where the assessing authority is satisfied that the failure of the dealer to disclose the whole or part of the turnover or any other particulars correctly, or to submit the return before the prescribed date, was willful; and

    h. shall not exceed one half of the tax or the fee, due in a case where such failure was not willful:

    Provided that where such failure occurred due to a bona fide mistake on the part of the dealer, no such penalty shall be levied.

    Explanation: The expression ‘assessing authority’ occurring in this section shall, in relation to licence fee or registration fee, be construed as referring to the licensing or registering authority, as the case may be, under this Act.

Section 15 – Provisional assessment of tax

1. The tax payable under this Act for each year may be provisionally assessed in advance during the year in monthly or other prescribed instalments on the basis of estimated or actual turnover of the dealer; and for that purpose a dealer may be required to submit a return or periodical return of estimated or actual turnover and pay the tax on the basis of such return or periodical returns, in such manner as may be prescribed.

2. If the assessing authority has reason to believe that the provisional assessment for any period was made on too low a turnover or at too low a rate, or on too high a turnover or too high a rate, he may enhance or reduce, as the case may be, such provisional assessment.

    Provided that before making an enhancement of the provisional assessment

as aforesaid the assessing authority shall, except where such enhancement is based on the turnover finally determined for the preceding year, issue notice thereof to the dealer and make such inquiry as he considers necessary.

3. The tax provisionally assessed may be levied and collected, either in advance during the year in monthly or other prescribed instalments or at any time thereafter in one lump sum.

4. Any dealer who is liable to pay tax fails to submit a return as required by the provisions of this Act or the rules made thereunder or any dealer who fails to pay tax due on the basis of the return submitted by him under Section 13 or fails to pay the tax provisionally assessed shall be liable to pay by way of penalty, -

    a. an amount equal to thirty per cent (30%) of the tax where the dealer has charged the tax from the purchaser; and

    b. in any other case, an amount equivalent to twenty per cent (20%) of the amount of tax:

        Provided that before levying such penalty the assessing authority shall give the dealer a reasonable opportunity of being heard.

Section 16 – Payment of tax and other dues payable under the Act.

1. The tax assessed, whether provisionally or finally and the penalty levied under the provisions of this Act shall be paid by the dealer in such manner, and within such time, not being less than fifteen days from the date of service of the notice of assessment or of the levy of penalty, as may be specified in such notice:

    PROVIDED that the time-limit of fifteen days for a notice under this sub-section shall not apply to casual traders:

    PROVIDED FURTHER that the assessing authority may, for good and sufficient reasons to be recorded in writing, require the dealer to pay the tax assessed or the penalty levied within such time, not being less than seven days from the date of service of the notice of assessment, as may be specified in the notice:

    PROVIDED ALSO that the assessing authority shall require the dealer to pay the tax due as per the return filed by him in case such return is not accompanied by the proof of payments of tax and it shall not be necessary to give minimum time of fifteen days for payment of tax as mentioned in this section.

2. (a) Notwithstanding anything contained in sub-section (1), on an application made by the assessee, the Deputy Commissioner may, by an order, allow extension of time for payment of any tax, penalty or other amount due under this Act, or permit the payment thereof in such instalments, within such intervals and subject to such conditions as he may specify in the said order, having regard to the circumstances of

each case;

(b) In every case where extension of time for such payment is allowed or where such payment in instalments is permitted, the dealer shall pay, in addition to such tax, penalty, instalment or other amount, interest at the rate of one rupee and fifty paise for every one hundred rupees or part thereof for each month or part thereof, from the date specified for its payment for the period so extended or on the instalments so permitted.

3. (a) If the tax assessed or penalty levied or any other amount due under this Act or any instalment thereof is not paid by any dealer or other person within the time specified thereof in the notice of demand or in the order permitting the payment in instalments or in any other provision of this Act or the Rules made thereunder, the dealer or other person, shall pay, in addition to the amount of such tax, penalty, instalment or any other amount, interest calculated per every one hundred rupees or part thereof at the rates mentioned below for the period of delay from the due date or date specified for its payments.

    i. within 30 days of delay: at the rate of 18% of the tax due

    ii. above 30 days but below 90 days of delay: at the rate of 24% of the tax due

    iii. above 90 days but below 365 days of delay: at the rate of 30% of tax due

    iv. for delay exceeding one year: at the rate of 36% of the tax due.

    (b) if any dealer fails to pay tax along with the return due to be filed by him, interest calculated at the rates mentioned in sub-clause(a) of this sub-section shall be levied for the period of delay commencing from the date on which the return is due to be filed by that dealer to the assessing authority.

    (c) The dealer shall calculate the interest at the rates mentioned above for the period of delay and shall remit it along with the tax due to be paid by him;

    (d) If any dealer fails to file a return he shall be liable to pay interest on the amount of tax due or as assessed by the assessing authority for the period of delay commencing from the date on which the return is due to be filed by him.

4. If the tax assessed or penalty levied or interest payable under this Act or any instalment thereof, and the fees payable towards licence or registration, are not paid by a dealer within the time specified therefor, the whole of the amount then remaining unpaid may be recovered from him as if it were an arrear of land revenue.

5. The penalty payable under this Act shall be without prejudice to the institution of any proceeding for an offence under this Act, or for the recovery of the entire amount remaining unpaid under sub-section (4).

Section 28: Powers to order production of accounts and powers of entry, inspection etc.

1. Any officer not below the rank of an Assistant Commercial Tax Officer authorized by the State Government in this behalf may for the purposes of this Act require any dealer to produce before him the accounts, registers and other documents, and to furnish any other information relating to his business.
2. All accounts, registers and other documents maintained by a dealer in the course of his business, the goods in his possession, and his offices, shops, godown, vessels or vehicles shall be open to inspection by such officer at any time during the business hours prescribed under the relevant law for the time being in force or where no such hours are prescribed at all reasonable times.
3. If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or other documents of the dealer as he may consider necessary and shall give the dealer a receipt for the same. The accounts, registers and documents so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

   Provided that such accounts, registers and documents shall not be retained for more than thirty days at a time except with the permission of the next higher authority.

4. For the purposes of sub-section (2) or sub-section (3), any such officer shall have power to enter and search, at any time during the business hours prescribed under the relevant law for the time being in force, or where no such hours prescribed under the reasonable items, any office, shop, godown, vessel, vehicle or any other place of business or any building or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any goods, accounts, registers or other documents of his business:

   PROVIDED that no residential accommodation (not being a shop-cum-residence) shall be entered into and searched by any such officer below the rank of a Deputy Commissioner except on the authority of an order issued by any officer not below the rank of a Deputy Commissioner of Commercial Taxes Department working in Vigilance and Enforcement Department having jurisdiction over the entire State of Andhra Pradesh and all searches under this sub-section shall so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 subject to the rules if any, made in this behalf.

5. The power conferred by sub-section (4) shall include the power to break open any box or receptacle in which any goods, accounts, registers or other documents of the dealer may be contained, or to break open the door of any premises, where any such goods, accounts, registers or other documents may be kept:

   PROVIDED that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, fails or refuses to open the door on being called upon to do so.

   (5A) The power conferred by sub-section (4) shall also include the power to –

   c. seal for a period of not exceeding twenty-four hours, any box, receptacle, godown or building where any goods, accounts, registers or other documents

of the dealer are, or reasonably believed to be kept, if the owner or any other person in occupation, leaves the premises or refuses to open any box, receptacle, godown or building or is not readily available;

d. search any person (other than a customer or a visitor) who has got out of or is about to get into, or is in, any building, vessel or vehicle, if the officer has reason to suspect that such person has secreted about any goods, accounts, registers or other documents.

f. Any such officer shall have power to seize and confiscate any goods which are found in any office, shop, godown, vehicle, vessel or any other place of the business or any building or place of the dealer, but not accounted for by the dealer in his accounts, registers and other documents maintained in the course of his business:

PROVIDED that before taking action for the confiscation of goods under this sub-section, the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

Explanation: It shall be open to the State Government to authorize different classes of officers for the purpose of taking action under sub-sections (1), (2) and (3).

Section 30 – Offences and penalties

1. Any person who –

a. fails to pay within the time allowed, any tax assessed on him or any penalty levied, or any fee due from him, under this Act; or

b. being a person obliged to register himself as a dealer under this Act, does not get himself so registered; or

c. willfully acts in contravention of the provisions of this Act or the rules made thereunder, shall on conviction be liable to be punished with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees.

2. Any person who –

a. prevents or obstructs inspection, entry, search or seizure by an officer authorized under section 28, in contravention of the terms thereof; or

b. prevents or obstructs inspection of any goods vehicle or boat carrying goods, by an officer-in-charge of check post or barrier or any officer empowered under section 29, shall on conviction, be liable to be punished with simple imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than five hundred rupees but which may extent to two thousand rupees:

PROVIDED that the minimum sentence of imprisonment shall not be applicable to offences other than the offence of assault on officer while discharging his duties under section 28 or section 29.

3. Any person who –

c. willfully submits an untrue return or fail to submit a return as required by the provisions of this Act, or the rules made thereunder;

d. fraudulently evades the payment of any tax, fee or other amount, not exceeding rupees one lakh, due from him under this Act;

e. knowingly produces incorrect or false accounts, registers or other documents or furnishes incorrect or false information in any proceedings under this Act;

f. willfully fails to issue a bill or cash memorandum in respect of a sale as prescribed under any provision of this Act; or

g. prevents inspection or examination or willfully fails to produce documents or to give information as required by section 28; shall on conviction be liable to be punished if it is a first offence, with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees and if it s a second offence with simple imprisonment which may extend to one year and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees; and if it is a third or subsequent offence or an offence falling under clause (b) involving an amount exceeding rupees one lakh with simple imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees.

d. Any person who after purchasing any goods in respect of which he has made a declaration under the proviso to sub-section (1) of section 5B fails, without reasonable excuse, to make use of the goods for the declared purpose shall, on conviction, be liable to be punished if it is a first offence with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees and if it is a second offence with simple imprisonment which may extend to one year and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees and if it is a third or subsequent offence with simple imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees.

Section 32 – Composition of offences:

1. The prescribed authority may accept, from any person, who has committed or is reasonably suspected of having committed an offence under this Act, by way of composition of such offence –

   a. where the offence consists of the failure to pay on the evasion of any tax, recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding three thousand rupees or double the amount of the tax recoverable, whichever is greater, and

   b. in other cases a sum of money not exceeding three thousand rupees.

2. Any order passed or proceeding recorded by the prescribed authority under sub-section (1) shall be final and no appeal or application for revision shall lie therefrom.

9. A perusal of the above provisions of the Act shows the scheme as to the liability of

the dealer to file the returns declaring correct statements of affairs and the powers of the assessing officer and other authorities empowered to take various steps not only to get the correct facts as to the turnover and the nature of the transactions, but also even to impose penalties as well as to prosecute for the offences contemplated under the provisions of the Act. According to Sec.12(1), every dealer, whose turnover in any year is not less than Rs.50,000/- is obligated to get himself registered under the Act, and under Sec.13 such dealers are obligated to submit return or returns relating to his turnover for the periods prescribed. Thereafter, the Assessing Officer under Sec.14 is authorized to make an assessment of the tax payable on the basis of the returns filed. If the returns appears to him to be incorrect or incomplete, he shall after giving an opportunity to the dealer, assessee to the best of his Judgment, the amount of tax due from the dealer. Such assessment has to be made before the expiry of four years from the end of the year of assessment. It is also provided that where the particulars provided in the return as a result of the inspection of accounts, registers, and other documents, in such cases, the returns shall be treated as incorrect or incomplete, and proceed to make best judgment assessment. While making best judgment assessment, the assessing authority may also direct the dealer to pay in addition to the tax, penalty, where the failure of the dealer to disclose the whole or part of the turnover or any other particulars was willful, which shall not be less than three times but which may extend to five times the tax or the fee due from the assessee. But, however, if such omissions had occurred due to the *bona fide* mistake on the part of the dealer, no such penalty shall be levied. Section 15 of the Act provides for provisional assessment. Under this provision, the tax payable for each year may be provisionally assessed in advance during the year in monthly or prescribed instalments on the basis of estimated or actual turnover of the dealer for which the dealer may be required to submit a return or periodical returns. The assessing authority has given the power to vary the amount of tax payable under such provisional assessment. But, however, where there is an enhancement of the provisional assessment, the dealer is required to be issued a notice and the Assessing Officer is obligated to make an enquiry. If any dealer fails to pay the provisionally assessed tax, he shall be liable to pay penalty, which is to the extent of 30% of the tax where the dealer has charged the tax from the purchaser; and in any other case 20% of the amount of tax, and such penalty has to be levied only after giving the assessee an opportunity. Section 16 provides for payment of tax and other dues payable under the Act. The tax assessed, whether provisionally or finally, and

the penalty levied shall be paid by the dealer within the time fixed by the authority, but such time is not being less than 15 days from the date of service of notice of assessment or the penalty. The time limit prescribed above for collection of the tax would not be applicable to casual traders. But, however, the assessing authority is given the discretion where there are circumstances, the period of 15 days may be reduced for good and sufficient reasons to be recorded in writing, but even in such cases, the period shall not be less than seven days from the date of service of notice of demand. But, the exception is that where the dealer filed returns, but fails to pay the tax due as per the return, in such cases it shall not be necessary to give any minimum time, as referred to earlier. It is also provided to the dealer to seek extension of time and the Deputy Commissioner is empowered to grant of extension of time for payment of tax, penalty or any other amount or even by way of instalments, and in either case where the dealer avails the above extension of time or instalments, he is liable to pay interest at the rate of 18%. If the dealer fails to pay the amount within the time specified in the notice of demand or the extended time, the dealer is liable to pay interest at varying rates from 18%, within 30 days, to 36% for the delay exceeding one year. Similarly, in the case of dealer, who fails to file the return is also liable to pay interest on the amount of tax due or as assessed for the period of delay commencing from the date on which the return is due. The tax, penalty, or interest payable under this Act if not paid, the same may be recoverable from the dealer as if it were an arrear of land revenue. The penalty payable under this Act shall be without prejudice to the institution of any proceedings for the offence under the Act.

Section 28 provides the power to order production of accounts and also to make enter any premises, where business is being carried on for the purpose of conducting inspection. Any officer, not below the rank of Assistant Commercial Tax Officer, authorized by the State Government may, for the purpose of the provisions of the Act, require any dealer to produce the accounts, registers and other documents, and to furnish any other information relating to his business. Such officer has got the power at any time during the business hours prescribed or at all reasonable times, to enter the office, shops, godown, vessels or vehicles and inspect the accounts, registers and other documents maintained by the dealer in the course of his business. If such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other amount due under the Act may, for the reasons to be recorded in writing, seize such accounts, registers and other documents of a dealer

and shall give the dealer a receipt for the same, and the officer can retain such seized, registers, documents only for so long as may be necessary for their examination and for any inquiry, which shall not extend beyond 30 days. With reference to the residential accommodation of a dealer, only an officer of the rank of Deputy Commissioner or authorized by such officer alone having jurisdiction and all searches shall be in accordance with the provisions of the Code of Criminal Procedure, and the Rules made in that behalf. The officer referred to earlier is also having the power to break open any box or receptacle in which any goods, accounts, registers or other documents of the dealer may be contained, but such break open shall be exercised only after giving the owner or any other person in occupation, a notice and if he fails or refuses to open the door on being called upon, such officer has also given the power to seal the premises or the box or receptacle or godown for a period not exceeding 24 hours. The above referred officer is also given the power to seize and confiscate any goods, which are found in any office, shop godown, vehicle, vessel or any other place of the business or place of the dealer, but not accounted by the dealer in his accounts, registers and other documents maintained in the course of his business. But, such act of seizure and confiscation has to be effected only after giving an opportunity to the dealer.

Section 30 deals with the offences and penalties. Any person, who fails to pay the tax assessed within the time or penalty or any fee; any person obliged to register himself as a dealer, but does not get himself so registered; willfully acts in contravention of the provisions of the Act or the Rules made thereunder, shall on conviction be liable to be punished with fine, which shall not be less than Rs.500/- but which may extend to Rs.2000/-. Any person, who prevents or obstructs inspection, entry, search or seizure by an officer referred to in Section 28 or prevents or obstructs inspection of any goods vehicle or boat carrying on goods, by an officer-in-charge of check post referred to under Sec.29, shall on conviction, be liable to be punished with simple imprisonment, which shall not be less than three months but which may extend to one year and with fine. But, however, it is provided that the minimum sentence of imprisonment shall not be applicable to offences other than the offence of assault on officer while discharging his duties under Sections 28 and 29. It is further provided that any person, who willfully submits an untrue return or fails to submit a return; fraudulently evades the payment of any tax, fee or other amount not exceeding Rs.1.00 lakh; knowingly produces incorrect or false accounts,

registers or other documents or furnishes incorrect or false information in any proceedings under the Act; willfully fails to issue a bill or cash memo in respect of a sale, as prescribed under the provisions of the Act; or prevents inspection or examination or willfully fails to produce documents or to give information as required by S.28, shall on conviction be liable to be punished, if it is a first offence-with fine from Rs.500 to Rs.2000; second offence - with simple imprisonment up to one year, in addition to the fine referred to earlier; third or subsequent or an offence falling under clause (b), involving an amount exceeding rupees one lakh - with simple imprisonment, which shall not be less than three months, but may be extended to one year together with fine, as referred to earlier. It is also provided that any person while purchasing goods makes a declaration under the proviso to sub-section (1) of proviso to Section 5B, fails without reasonable excuse to make use of the goods for the declared purpose, shall, on conviction, be liable to be punished in a similar way as referred to earlier. The owner or other person-in-charge of a boat or goods vehicle, who fails to carry with him any of the records or documents specified in Section 26 and 27, on conviction shall be liable to be punished with simple imprisonment, which may extend to one year in addition to the fine of Rs.500 to Rs.2000/-. The owner of the boat or the goods vehicle, however is also held liable to be punished similarly, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. If a driver or any other person-in-charge of a boat or goods vehicle refuses on demand by an officer-in-charge of the check post or any other officer empowered under sub-section (2) of section 29, to give his name and address or the name and particulars of the owner of the boat or goods vehicle or of the consignor and consignee of the goods or gives any false information in respect of the above, he shall on conviction be liable to be punished with simple imprisonment up to one year and with fine of Rs.500 to Rs.2000. Any person, who makes a statement or declaration in any of the records or documents specified in Ss.26 and 27, knowing fully that such information furnished is false, shall on conviction be punishable as referred to earlier. Similarly, a person, who is a party in any fraudulent evasion or attempt of evasion or abetment of evasion of any tax, shall on conviction be liable to be punished similarly. It is also provided that any person in possession of any such forms as may be notified, which has not been obtained by him from the authorities concerned, is also liable for punishment by way of imprisonment, which may extend to six months or with a fine.

Section 32 provides for composition of offences. The prescribed authority may accept from any person, who has committed or is reasonably suspected of having committed an offence under this Act by way of composition of such offence, (i) (a) where the offence consists of the failure to pay or the evasion of any tax, recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding three thousand rupees or double the amount of the tax recoverable, whichever is greater, and (b) in other cases a sum of money not exceeding three thousand rupees. Any order passed or proceeding recorded shall be final and no appeal or revision shall lie therefrom.

10. The grievance of the dealers in all these writ petitions is that the inspecting authorities, who are members of the Vigilance Wing of Sales Tax Department, at the time of inspection forcing the dealers either at the threat of seizure of the stocks or closing the business, obtained the statements from the person available, who ever he may be, agreeing to compound the alleged offence, and also collecting the amounts not only towards the compound fee, invariably equivalent to the amount of tax, but also towards the tax either by cash, cheque, or even by way of post-dated cheques on the spot. According to the dealers, this action of the inspecting authorities is not preceded by the observance of the procedure sanctioned by law. It is also their contention that in many cases even after such action of collecting the compounding fee as well as the tax for the alleged irregularities, no orders are being passed. Therefore, such actions of the officials of the Department of the Vigilance Wing have to be declared as illegal, apart from lack of jurisdiction, and the amounts collected by adopting such methods have to be directed to be refunded with interest as well as imposing exemplary costs.

This stand of the dealers is opposed by the Department stating that it is only the voluntary action of the dealers, which made the Department to accept the compounding of the offence, and, accordingly, they are collecting compounding fee and the tax payable by the dealers.

11. Both sides have relied upon various decisions in support of their respective claims. Hence, it would be appropriate to refer to those decisions here. The first set of decisions relied upon by the petitioners are as under:

In ***Annam Jewellers v. Dy.Commercial Tax Officer***, a Division Bench of this Court had an occasion to examine the action of the Department in similar situation. In that case two writ petitions filed by two dealers were disposed of together. Both are proprietary concerns, engaged in the business of gold and silver articles. Both the premises were inspected by the 1st respondent, and on verification of the stocks, the inspecting authority got recorded statements from both the writ petitioners that the petitioners were liable to pay tax under Sec.6A of the Andhra Pradesh General Sales Tax Act, 1957, and accordingly, collected the tax as well as the penalty, which was five times that of the tax payable and the amount was collected by way of cheques. The said action of the department was questioned on the ground that the said action is arbitrary, and that no notice and opportunity was given to the dealers and no assessment was also made. The Court found that the levy of penalty at five times the amount of tax was unsustainable, as it was not a case of composition of offence under Sec.32 of the Act, and ordered refund of the amounts collected.

12. In ***Priyanka Wines v. Assistant Commissioner***, the officers of the Vigilance and Enforcement Wing of the Department inspected the business premises of the petitioner and collected post dated cheques towards tax, which was assailed on the ground that such collections were illegal in the absence of any assessment or raising a demand following the due procedure. Therefore, the tax should not have been collected. It was also alleged that the taxes were collected under pressure and coercion. Though it was contended on behalf of the respondents that on inspection, suppression of turnover was found and when it was pointed out to the petitioners, they voluntarily gave a statement admitting the concealment and also gave the post-dated cheques. The Division Bench of this Court rejected the contention of the respondents observing that -

> " The fact that post-dated cheques were collected was suggestive of some pressure tactics exerted on the petitioners. It may be that the respondents, who are connected with the Intelligence or Vigilance Department, can inspect the premises and record statements, but without following the procedure for assessment, it is not open to them to demand collection of tax on the alleged suppressed turnover then and there. The proper course would have been to send the statements to the Assessing Officer and to request him to initiate necessary steps for making the provisional or final assessments as the case may be, or to take such other steps as are open to the assessing authority to safeguard the interests of revenue pending such assessments. But, this procedure has been given a go-bye despite the deprecation of such practices by a Division Bench of this Court in *Annam Jewellers v. Deputy*

Commercial Tax Officer [1996] 102 S.T.C.506."

Holding so, the respondents were directed to return the post-dated cheques collected from the petitioners. However, it was left open to the respondents to proceed against the petitioners in accordance with law.

13. This issue was considered again in ***Life Line Devices v. Commercial Tax Officer*** by another Division Bench of this Court. In this case the petitioner filed the Writ Petition aggrieved by the action of the respondents in collecting cheques for a sum of Rs.13,12,563/- towards tax and compounding fee on the spot without making an assessment or demand as illegal and contrary to the provisions of the Act. The petitioner is a registered dealer, dealing in life saving cardiology equipment. It has a branch at Calcutta. There was a surprise inspection by the staff of the Regional Vigilance and Enforcement Officers on October 22, 1999. On that day, a statement was recorded from the Managing Partner of the petitioner-firm in which he stated that at the time of inspection there were loose papers and note books showing the business transactions apart from the files and registers. The books of accounts were stated to be with the auditor. The Managing Partner gave the particulars of stock found in the premises. On November 2, 1999, a further statement was recorded, according to which the petitioner-firm affected supplies of high value stents and balloons to various corporate hospitals to avail of the sales tax exemption benefit available in West Bengal. It was stated that the goods were first taken delivery by his staff for certain reasons in Hyderabad and then supplied to various hospitals as per their requirements. Then, basing on the said statement, the amount was collected by way of cheques. The Division Bench, which heard the Writ Petition under the above facts, observed that -

> "There can be no doubt that the second respondent and the Regional Vigilance and Enforcement Officer acted high-handedly and in utter disregard of law by which they are bound. Undisputedly and indisputably, the Andhra Pradesh General Sales Tax Act within the realm of which the second respondent and his superiors are supposed to discharge the functions, does not authorize the on-the-spot collection of tax by coercion. The Act provides for assessment-provisional or final and a procedure therefor. The very fact that the petitioner's representative was made to part with post-dated cheques under protest would unequivocally indicate that the payment was not made voluntarily. The second respondent and the Regional Vigilance and Enforcement officials topsy-turvied the procedure by first collecting the tax-by hook or crook and then addressing a letter to the Assessing Officer while furnishing the material gathered as a result of inspection and requesting him

> to take necessary action. In a more or less same situation, a Division Bench of this Court to which one of us (PVR,J.) was a member, in *Priyanka Wines v. Assistant Commissioner (CT) [1998] 110 S.T.C. 73* expressed its displeasure and condemned the practice of the Vigilance and Enforcement Officials pressurizing the assessees to give the cheques on the spot towards the alleged tax due."

The Division Bench after referring to the above referred Judgments, further made the following observations: -

> "Despite the disapproval of the action of the Vigilance and Enforcement officials in language as clear as it could be, the said officials have not learnt to obey the rule of law and the impact of the Judgment of this Court has not been felt at all. The illegal and arbitrary action of collecting the post-dated cheques under pressure is persisting. We have to again condemn this action and further warn the concerned officials of the Vigilance and Enforcement Department or the Intelligence Wing that they should forthwith stop collecting the post-dated cheques or money towards the tax-estimated or even admitted to be due and leave it to the competent Assessing Officer to do this part of the job after giving opportunity to the assessee before passing an order in conformity with the provisions of the Andhra Pradesh General Sales Tax Act and the Rules. Otherwise, they will be liable to be dealt with under the Contempt of Courts Act."

14. In ***Sree Rama Trading Co., v. C.T.O. (Int) No.1, Hyderabad***, a Division Bench of this Court had an occasion to consider the issue of collecting the compounding fee at the time of inspection. In that case, the petitioner, a registered dealer, was carrying on business in the manufacture and sale of groundnut oil and cake. Its business premises was inspected on 5.1.1982 by the respondent and on 8.1.1982 the authorities recorded the statement of one of the partners of the petitioner-company that there has been an excess stock of 9321 kgs. of groundnut cake compared to the ground stock. The office also found that the petitioner has not maintained the books properly. On that basis, the Department issued a notice calling upon the petitioner to reply within 7 days whether it is willing to compound the offence under Sec.32. In pursuance of the said notice, the petitioner expressed its willingness and accordingly agreed and paid Rs.6793/- on 8.1.1982 towards compounding fee on account of the said two violations. Later a Division Bench of this Court in *Sri Balaji Company v. Commercial Tax Officer (55 S.T.C.292)* held that conferment of statewide jurisdiction on certain officers is not warranted by the Act and hence such conferment is incompetent and invalid. The said decision was rendered on 8.4.1983. In view of the said decision, the petitioner filed Writ Petition in

April 1984 seeking to quash the compounding and collection of Rs.6793/-. Though Division Bench rejected the contention of the petitioner on the ground of lack of jurisdiction, as was decided by this Court, but, however, modified the quantum liable to pay by the petitioner as the compounding fee cannot exceed Rs.1000/- and, accordingly, the excess amount was directed to be refunded or adjusted. One of the contentions advanced before the Bench was that the amount was collected by exercising coercion and duress. The said contention was rejected on the ground that the same requires evidence to be recorded on both sides. Further, there is no presumption that just because the notice to compound emanated from the officer, there was duress, and therefore, the Court refused to go into that question.

15. In ***Jyothi Chemicals v. Commercial Tax Officer***, a learned single Judge of this Court considered the validity of best judgment assessment. In this case, for the month of September 1972, the petitioner filed Central Sales tax return, as required under Rule 14-A(1) of the Central Sales Tax (A.P.) Rules, 1957, before 25th October 1972, showing the turnover of Rs.3,62,378/-, and the tax payable thereon as Rs.10,871/-. The return, however, was not accompanied by a receipt from a Government treasury or a crossed cheque in favour of the assessing authority for the full amount of the tax payable as per the return. The respondent issued a demand notice in Form CST-VII, referable to Rule 14-A(4) of the said Rules, on 21-7-1973, for the payment of the said amount within 21 days of the receipt of the said notice. The said action of the respondent was challenged in the Writ Petition. The contention of the petitioner was that under the provisions for the recovery of the admitted tax when the return was not accompanied by proof of payment of tax, even before the final assessment is made, the Central Rules do not make any provision for making a best judgment assessment and for the recovery of the said tax. According to the petitioner, as per the Rules, the best judgment assessment can be made provisionally only where a return is not filed or the return filed is incorrect, but not where the turnover disclosed in the return is not disputed or the return is not accompanied by proof of payment of tax. According to this Court, in terms of Rule 14-A(4), the Assessing Officer has to give a notice to the dealer, giving opportunity to prove the correctness and completeness of the return, only then determine the turnover to the best of his judgment and provisionally assess the tax payable. But the Assessing Officer violated the principles of natural justice, as no opportunity was

given to the assessee; therefore, set aside the assessment and consequently the notice issued. However, the matter was left open to the respondent for proceeding in accordance with law.

16. In ***B. Venkatappaiah Son & Co. v. Commercial Tax Officer***, a learned single Judge of this Court had an occasion to consider the legality of the notice for compounding the offence before completion of the enquiry in the assessment proceedings. The petitioner-firm was dealer in copra, and submitted its returns of the turnover for the months of April to August, 1969. In those returns, according to the respondent, certain turnovers, which ought to have been included, have not been included. The respondent, therefore, proposed to assess the petitioner for the above said period on the turnover of Rs.8575=11 paise, and at 3% under the Andhra Pradesh General Sales Tax Act, 1957 and called upon the petitioner to file their objections, if any, against the best assessment by 29th October, 1969. Simultaneously, the impugned notice was also issued bringing to the notice of the petitioner that the returns filed by him are incorrect and the failure to submit correct returns constituted an offence under Sec.30(3)(a) of the Act, and further calling upon him to either accept composition of the offence under Sec.32 or face a prosecution without further notice. The learned Judge while considering the validity of the said notice observed -

> "It may be pointed out that there is no statutory obligation upon the Commercial Tax authorities to make any offer to compound any offence punishable under the Act. The prescribed authority is only empowered by Sec.32 of the Act to accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act, by way of composition of such offence, certain sums specified under clauses (a) and (b) of section 32 of the Act. That presupposes an offer by a person who has committed an offence before there is an acceptance by the prescribed authority. The statute does not contemplate an offer to proceed from the prescribed authority for composition of an offence."

The learned Judge further observed, --

> "The dealer is given a chance to show cause that the returns submitted by him are correct and the turnover proposed to be included in the said return for the purpose of provisional assessment cannot be validly included. It is only after hearing the objections of the petitioner, could it be positively held that the petitioner had submitted an incorrect return. Before the completion of enquiry, while the respondent may suspect that the petitioner has not submitted a correct return of the turnover, it cannot be held that the Commercial Tax Officer has a reasonable suspicion. Mere suspicion

cannot be equated with reasonable suspicion. Only the result of an enquiry could form the basis for any reasonable suspicion that the petitioner has committed an offence, which he may or may not agree to be compounded in accordance with Sec.32 of the Act. Until an enquiry, pursuant to the Notice is completed, in my opinion, the Commercial Tax Officer cannot entertain a reasonable suspicion that the petitioner has committed an offence. Hence, the question of asking him to choose either to face a prosecution or agree to the composition of an offence does not arise. The impugned notice is, therefore, premature", and accordingly quashed.

17. In ***Baldev Raj Kabaria v. State of Punjab***, a Division Bench of the Punjab & Haryana High Court had an occasion to consider the legality to record a statement of the assessee to find out the liability to be assessed or not. The Division Bench, while considering the question referred to it for its opinion, observed, -

"A bare perusal of the sub-section shows that the assessing authority has not been given any power to record the statement of a dealer to find out if he was liable to be assessed or not. IN fact, the assessing authority cannot record the statement of a dealer under any of the sub-sections of Sec. 14. Therefore, the action of the assessing authority in recording the statements of the petitioner and getting the same thumb-marked from him is not in consonance with sub-section (3)."

18. In ***Bhandari Metals & Alloys (P) Ltd. v. State of Karnataka***, a Division Bench of the Karnataka High Court had an occasion to consider the issue whether an assessee, who filed a return for assessment under a mistake is entitled to contest the assessment made by the assessing authority. The Division Bench held, --

"If the assessee makes a mistake in submitting a return and submits to be assessed to tax before the assessing authority, he is not estopped or precluded by any law from preferring an appeal and showing to the appellate authority that the sales are, in fact, not exigible to tax. If such a contention is taken, the appellate authority is under a duty to examine the matter and determine the question whether or not the sales are exigible to tax. Therefore there is no question of invoking the doctrine of estoppel."

19. The other set of cases relied upon by the respondent-Department, where the action of the Department was sustained, are: -

In ***S.R.Traders & Bhavani Traders v. The ACCT & Ors.***, a Division Bench of this Court sustained the action of the respondents in collecting the tax at the time of

inspection, based on the statements alleged to have been given by the dealers at the time of inspection, negativing the claim of the petitioners that such statements were obtained by coercion and duress. The relevant observations of the Bench are as under:

> "Further, we find from the statements filed by the petitioner that 'Further on verification of our books of accounts, you have noticed that we have recorded above transactions in our books of accounts, we have not reported in return and paid taxes to the department. The taxable rates as per our books of account is worked out as under: We are herewith pay the tax of Rs.2,36,474 on above turnover, vide Cheque No.981177, dt. 21.2.93.' In respect of the petitioner in W.P.No.2444 of 1993 also, a similar statement was recorded. In other words, they have admitted that the transactions recorded in the books of account have not been reported in the returns filed by them. Having accepted before the authority that they have suppressed the inclusion of the transaction in the returns and having paid the tax by way of cheques, to avoid the seizure of stocks and seal of the business premises, it is now not open to the petitioners, to seek for a direction not to encash the cheques issued by them. It is open to the petitioners to raise the objection before the assessment authorities."

20. In ***Kaki Butchi Raju Son v. State of A.P.***, a Division Bench of this Court had an occasion to consider the issue of collection of tax and compounding fee based on the statements. In this case, the petitioner, a registered dealer, challenged the legality of the order passed by the Commercial Tax Officer, Peddapuram dated 31.12.1991 by which that authority accepted the petitioners offer to compound the offence of tax evasion on payment of Rs.2822/- and assessed the tax payable by the assessee at Rs.1411/-, on the suppressed turnover of Rs.64,160/- detected during the course of inspection on 31.12.1991. The petitioner's jewellery shop was inspected by the 2nd respondent, the assessing authority on 31.12.1991, who found certain irregularities or omissions, and on the basis of such irregularities, the suppressed turnover was determined at Rs.64,160/-, on which the tax liable to be paid came to Rs.1411/-, and therefore, compounded the offence accepting the amount of Rs.2822/-. The said action was assailed unsuccessfully in appeal, and a second appeal. Hence, the Writ Petition. The Division Bench proceeded on the premise that the assessee offered to compound the offence, which was accepted by the assessing authority and accordingly collected the compounding fee. Therefore, there was no illegality or irregularity, as the petitioner admitted the liability in view of the omissions and commissions.

21. In ***Badrinath Oil Company v. Asst., Commissioner***, a Division Bench of this Court was considering the questionability of the composition proceedings where it was alleged that such proceedings were under undue influence and coercion. In that case, the respondent-authorities collected Rs.8700/- towards tax on the alleged stock variation of Rs.6210 kgs of Pamolein oil. The authorities also further collected Rs.17,400/- under threat of arrest and imprisonment towards the compounding fee. The Division Bench though noticed the bar of the civil courts jurisdiction to assail any order or proceedings of the authorities under the Act, but, however, observed that the bar of Section 32 does not cover an order of the nature, where it was alleged that undue influence and coercion was exerted on the dealer to effect compounding of the offence, and therefore, a suit is held maintainable to the extent the collection of tax, which is allegedly done under undue influence or coercion and under threat of arrest and imprisonment. Observing so held that there is an alternative remedy to the petitioner, and therefore, the issue cannot be decided under Art. 226 of the Constitution of India.

22. In ***Bharat Metals v. Special ACTO & Anr.***, a Division Bench of this Court had an occasion to consider whether Vigilance and Enforcement Officer can collect tax at the time of inspection of the business premises of a dealer. In this case on 25.11.1991, the place of business of the petitioner was inspected by the respondents and found certain rough figures in a diary relating to reconciliation of accounts with the petitioner's supplier. The respondents also noticed the payments of certain amounts entered in the said diary. According to the petitioner, the respondents forced the Managing Partner of the petitioner firm to give statement as if the purchases were made in the month of October 1991 and payments made by the petitioner were unaccounted though made in the month of October 1991, and the petitioner sold the resultant furniture made out of such purchases of iron and steel for Rs.1,54,750/- and as first seller, he is liable to pay tax. Accordingly, the respondents issued a notice dt. 25.11.1991 to the petitioner requiring it to pay a tax of Rs.11,198/- and offer the explanation if any on the question of irregularities noticed, and further indicating that the department is willing to compound the offence if the petitioner desires to do so; and accordingly collected Rs.11,198/- and compounding fee of Rs.22,396/-, which was assailed in the Writ Petition. The Division Bench, on

consideration of the notice issued by the respondents and also the proposed action of the respondents to compound the offence, held that the impugned notice was not a demand notice, and when it is not a demand notice, the question of an assessment order preceding the demand notice does not arise at all. Further, as the Managing Partner of the petitioner firm has volunteered himself to pay the tax and also to get the offence compounded, there is no irregularity in accepting the said amounts.

23. In ***Sri Lakshmi Venkata Raghava Traders v. CTO (Int.& Enforcement Wing)***, the petitioner filed the Writ Petition seeking a direction to refund the tax amount and the compounding fee collected by the respondents alleging that the said amounts were collected at the time of inspection of the business premises, as the same is not in accordance with law. The Division Bench noticed that on the date of inspection the statement of one of the partners was recorded during the course of inspection, who admitted that there are differences in the stock of their mill. The value of the above differences and the tax payable on the said differential turnover was Rs.10,303/-. Accordingly, the petitioner paid Rs.11,161/- as tax and Rs.22,325/- as compounding fee. Though it was contended that the said amounts were collected basing on statement recorded under coercion and undue influence and threat, the Division Bench negatived the claim of the petitioner that such statement was obtained as alleged.

24. A perusal of the scheme under the Act as well as the decisions of this Court clearly shows that both the assessing authorities as well as the officers of the Vigilance Wing have no power to resort to the spot collections either by way of cash, cheques or even by way of post-dated cheques. The Vigilance Officers of the Department have got the power to enter the premises of the dealer to inspect not only the books of accounts maintained by the dealer, but also the verification of the stocks etc. The said inspecting authorities may also have the power to record statements from the dealers, but thereafter there is no provision to make a demand for payment of the tax/penalty or compounding fee on the spot. The Vigilance Officers, if they have got the power of assessment, can make the assessments after complying the procedure provided under the provisions of the Act; or otherwise those authorities can forward the statements recorded from the dealer to the concerned assessing authority, who can make assessment either provisional or final

or even revise the assessment basing on the material in accordance with law. Until and unless an assessment is made, no liability can be fastened on the dealer and equally the department is not entitled to collect any amount on the premise that the dealer has come forward accepting the alleged suppressed turnover or other irregularities and the same cannot be the basis for collection of tax, without preceding the same by an assessment order or any other order, fixing the liability of the dealer. If such a procedure is followed by the Officers, either assessing or the Vigilance, the complaint of the dealers that statements were obtained by force and coercion could be avoided, as in such cases, the dealers can have a right to dispute the statements already recorded and satisfy the concerned assessing authority about his claim of non-liability to the tax, as proposed by the officers of the department.

25. In fact, this situation was considered by a Division Bench of this Court in ***Life Line Devices v. Commercial Tax Officer*** (3 supra), and the Division Bench not only reiterated the displeasure expressed earlier in *Priyanka Wines (supra)* but also had gone to the extent of observing that for non-compliance of the procedure, the Officers would be liable to be dealt with under the Contempt of Courts Act. In spite of such serious view taken by this Court, still it appears that the Officers have been resorting to the same practice of collection of the alleged tax/penalty or compounding fee, adopting the same method alleging that the dealer has come forward agreeing to pay the tax, penalty or compounding fee. When once such procedure adopted by the Officers of the Department was disapproved by this Court in such strong words as is referred to earlier, there is absolutely no scope or justification to resort to the similar activities, showing the same stand. The Department may claim that the said actions were resorted to safeguard the interest of the department, but the said claim is devoid of merit, as many other alternatives are provided under the provisions of the Act, not only to seal the premises but also to seize the goods if the circumstances warrant and justify, and if the department apprehends that the dealer may not be available to be proceeded with or to recover the tax that would become due. In such circumstances, the dealer is also provided a remedy to get the stocks released on furnishing security. Apart from the above, under the provisions of the Act, a minimum period of 15 days for payment of the demanded tax is provided, however, which can be reduced to seven days for the

reasons to be recorded by the assessing authority, as is evident from the instances even considered by this Court. Invariably, the departmental authorities have violated the compliance of such requirement and made demands as well as collections almost on the spot, which resulted in creating a situation where serious allegations were made by the dealers against the department. The conduct of the authorities also had given scope for making such allegations, which were, in fact, found to be true in some of the cases.

26. Another peculiar feature of the alleged actions of the departmental officers is that even before making an assessment, compounding fee is being levied equal to or double the amount of the alleged amount of tax sought to be evaded, even in the absence of any assessment order quantifying the tax liability. Such levy and collection is clearly contrary to the provisions of the Act. In fact a learned single Judge of this Court in ***B. Venkatappaiah Son & Co. v. Commercial Tax Officer*** (6 supra) quashed a notice issued proposing to compound the offence, when issued along with a notice for assessment of the alleged suppressed turnover, as the learned Judge was of the view that such a notice could not be issued even before coming to the conclusion as to the tax liability. No doubt, a notice to compound an offence for levying compounding fee unrelated to the assessment may be issued, but even in such cases also a notice giving opportunity of minimum period contemplated under the provisions of the Act and the Rules must be provided. The non-compliance of such minimum period would always gives scope to make allegations of coercion and duress on the dealer. Not only to avoid such a situation but also to comply with the provisions of the Act and the Rules, it is mandatory on the part of the department to provide the minimum period prescribed under the provisions of the Act and the Rules.

27. Though on behalf of the respondents reliance was placed on certain decisions referred to earlier, but in none of those decisions the jurisdiction and power of the Officers was considered. But only when refund was sought for, the same was negatived on the ground that the dealer had voluntarily agreed the alleged suppression and paid the tax, penalty or compounding fee. Therefore, there is no case for ordering refund of the same. But the compliance or non-compliance of the provisions of the Act was not considered in any of those decisions. Therefore, those

decisions cannot be treated as authorities for the issue in question.

28. However in ***Sree Rama Trading Co., v. C.T.O. (Int) No.1, Hyderabad*** (4 supra) and in ***Badrinath Oil Company v. Asst., Commissioner*** (11 supra) this Court expressed the view that where certain allegations were made against the officers of the department that the statements were obtained under duress and coercion as well as the collection of the tax and the compounding fee under such circumstances, the adjudication of the said disputes requires recording of evidence, which could not be gone into while exercising jurisdiction under Art.226 of the Constitution of India. Further, it was expressed that there is no presumption that just because the notice to compound emanated from the officer, there was duress. Further it was also considered the prohibition contained under Sec.36 that the proceedings under the Act shall not be assailed before any authority or the Court except as otherwise expressly provided under the Act. To be precise it would be relevant to refer to Section 36 of the Act, which reads as under:

> "Save as otherwise expressly provided in this Act, as Court shall entertain any suit, or other proceeding to set aside or modify, or question the validity of any assessment, order or decision made or passed by any officer or authority under this Act or any rules made thereunder or in respect of any other matter falling within its or his scope."

29. The Division Bench of this Court though noticed that a suit or other proceedings are not maintainable either to set aside, modify or question the validity of any assessment order or other proceedings under the Act, but, however expressed that a suit is maintainable to question the collection of tax, which is allegedly done under undue influence and coercion and under the threat of arrest and imprisonment. The Division Bench also felt that there is no machinery provided under the Act to question the nature of the order, which is said to have been passed and the tax collected under undue influence and coercion as well as threat of arrest and imprisonment. In the absence of any specific machinery, the Court felt that the provisions of Sec.36 may not come in the way to institute a suit in a Civil Court. But, we are unable to agree with the said view expressed by the learned Judges of this

Court. When the legislature enacted a provision prohibiting any of the parties to the proceedings under the Act to approach any other forum than what is provided under the provisions of the Act, it is not for this Court to hold that still a suit could be maintained, if an order or proceeding is alleged to have been passed under certain circumstances, as referred to earlier. In fact, if the assessing authorities provided enough time as provided under the Act and the Rules, the dispute could be resolved before the assessing authority himself, if not, before the other hierarchical authorities provided under the statute. Those authorities are competent to consider the factual aspects. Therefore, the same would avoid driving the parties to any other fora for seeking relief. In our opinion the provisions of Sec.36 were incorporated to avoid unnecessary and lengthy litigation. If once the dealers are permitted to go out of the said bar to institute proceedings on some pretext or the other, the very intention of the legislature would be frustrated. Further, it is not for the Courts to show any other forum for adjudication, which is not provided in the statute. Hence, we disapprove the same.

30. In the result, the writ petitions are allowed setting aside the impugned orders wherever no assessments are made for the disputed turnover, and consequently the amounts collected under the impugned order are ordered to be refunded or adjusted if there are any existing outstanding demands. In cases where assessments are made, the collected tax shall be subject to the outcome of the statutory appeals, if any. Similarly, if the compounding fee levied and collected is equal to the tax without any assessments, in such cases, the compounding orders are also set aside and the fee collected is to be refunded to the dealers or adjusted if there are any existing outstanding demands. No costs.

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Bilal Nazki, J.

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S. Ananda Reddy, J.

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L. Narsimha Reddy, J.

Dt. 27.01.2005

Kvh

Separate concurring judgment by Hon'ble

Shri Justice L. Narsimha Reddy:

I had the advantage of perusing the judgment prepared by my learned Brother Justice S. Ananda Reddy. While agreeing with the views expressed by my learned Brother, I intend to supplement the same with few more paragraphs.

2. Shorn of minute details, the common feature in this batch of writ petitions is that the business premises of the respective writ petitioners were inspected by the vigilance wing of the sales tax department, and taxes as well as compounding fee are said to have been collected on the spot by using threat and coercion. It is alleged that no formal orders of assessment were passed nor the procedure prescribed by law was followed. When the writ petitions came up for hearing before a Division Bench, it emerged that different Division Benches of this Court have taken conflicting views, as to the legality of the action of the authorities of the commercial tax department, in collecting the alleged dues of sales tax and compounding fee on the spot, without passing any order of assessment. In that view of the matter, the matters were placed before the Hon'ble the Chief Justice, for appropriate orders, as to posting. It was in this context, that the Full Bench was constituted to hear and dispose of the matters.

3. In the affidavits filed in support of the writ petitions, the common plea raised by the petitioners is that they were forced to part with cash or postdated cheques, at the time of inspections undertaken, mostly by the vigilance wing. It was alleged that the very proposal for compounding the alleged violations emerged from the departmental authorities, in the form of coercion, and amounts were collected without there being any order of assessment or issuing demand notices.

4. In the counter affidavits filed on behalf of the respondents, it is broadly stated that, in the instant cases, the departmental officials noticed suppression of turn over by the respective petitioners, and when steps were about to be taken, for collection of arrears of tax and penalty, as well as to initiate prosecution, they volunteered to pay the due of tax and compounding fee. It is pleaded that when the petitioners paid the amounts, on their own accord, the occasion for passing any order of assessment or

issuing demand notice did not arise.

5. Learned counsel for the petitioners have submitted that the A.P. General Sales Tax Act and the Rules made thereunder, do not provide for collection of arrears of tax, on the spot. According to them, even where any violation is noticed on the part of a dealer, the assessing authority is empowered only to issue notices, directing the dealer to show cause as to why the tax payable on the turn over, which has escaped the assessment, cannot be recovered. They contend that it is only when the dealer fails to submit explanation, or when the explanation offered by him is not found satisfactory, that the assessing authority can pass an order and issue demand notice. They submit that the compounding of the offences, as provided for under Section 32, would arise, only when it is established that an offence was committed under the Act, which invariably, has to be on the basis of a speaking order. By referring to the various judgments rendered by this Court, learned counsel contend that the amounts collected from the petitioners are liable to be refunded.

6. Learned Government Pleader for Commercial Taxes, on the other hand, submits that the Act empowers the authorities, at various levels, to inspect the records and account books, and it was during the course of such inspections, that the suppression of turn over, by petitioners, was noticed. He submits that once the violation on the part of the petitioners was pointed out during the course of inspection, they have voluntarily offered to pay the amount due towards tax as well as the compounding fee, obviously to avoid prosecution and other proceedings. He contends that the respondents did not commit any illegality in accepting the offer by the respective petitioners for compounding the offences. He too relies upon certain judgments rendered by this Court.

7. The scheme of the Act as well as the purport of the relevant provisions has been dealt with extensively by my learned Brother Justice S. Ananda Reddy. Hence, it is not necessary to repeat the same. His Lordship has also referred to the decided cases on this aspect. From a perusal of the relevant provisions of the Act, and in particular Sections 12 to 16 and 28 to 32, it is evident that a dealer registered as such under the Act, is under obligation to submit the return of the turnover. A dealer may be required to submit even a provisional assessment. Section 16 mandates that the tax shall be paid, and it provides for levy of penalty as well as interest on delayed payment of undisputed tax. It is not necessary to refer to the minute details thereof.

8. Section 28 empowers the officers, not below the rank of Assistant Commercial Tax Officer, authorized by the State Government, in this behalf, to require any dealer to produce the accounts, register and other documents, and to furnish any information, relating to his business. He is also vested with the power to enter and search the offices, shops, godowns etc., during the business hours, for this purpose. Separate procedure is prescribed for search of residential premises. However, it needs to be noticed that Section 28 does not exempt the concerned officer from following the procedure prescribed under Section 14, in the matter of passing an order of assessment, namely, issuance of notice, consideration of explanation and passing an order of assessment, even where any suppression of turn over is noticed during the course of inspection.

9. Sub-section (1-A) of Section 14, clearly refers to the noticing of any suppression of turn over, during the course of inspection of accounts by an officer authorized under Section 28 (1). The said provision reads as under:

> **28 (1-A):** "Where the return submitted by a dealer includes the turnover or any of the particulars thereof which would not have been disclosed but for an inspection of accounts, registers or other documents of the dealer made by an officer authorized under this Act before the submission of such return, the assessing authority may, after giving an opportunity to the dealer for making a representation in this behalf, treat such return to be an incorrect or incomplete return within the meaning of sub-section (1) and proceed to take action on that basis".

The action contemplated under this provision is stipulated under sub-section (2) thereof. It empowers the assessing authority, to

a. determine the turnover to the best of his judgment,

b. assess the correct amount of tax payable on the turnover, which has escaped tax or to assess the tax at the correct rate on the turnover,

c. verify the correctness or otherwise of the deductions or exemptions, if any, wrongly allowed,

d. levy the licence fee or registration fee, wherever it is found to be payable, and,

e. to levy penalty as specified in sub-section (8).

All this would be possible, if only the findings recorded during the course of inspection are put to the dealer, and he is given an opportunity to explain as to why the corresponding amount, be it, towards arrears of tax or penalty, be not levied, and an order of assessment is passed, after considering the explanation. No separate procedure is contemplated for action to be taken by the authority, empowered under section 28.

10. After noticing the various provisions of the Act and the Rules, in several judgments, this Court held that no authority of the Commercial Tax Department is entitled to levy and collect tax on the spot, that too in the form of cash or postdated cheques. Such practice was deprecated. In ***Life Line Devices v. Commercial Tax Officer*** *[(2000) 119 S.T.C. 52],* this Court expressed its concern over the continued infraction of the procedure, by the enforcing officials, and warned that such a practice is liable to be dealt with under the provisions of the Contempt of Courts Act. Reference was made to earlier judgments in ***Annam Jewellers v. Deputy Commercial Tax Officer*** *[(1996) 102 STC 506]* and ***Priyanka Wines v. Assistant Commissioner*** *[(1998) 110 STC 73].* His Lordship Justice P. Venkatarama Reddi, as he then was, observed as under:

> "…the Andhra Pradesh General Sales Tax Act, within the realm of which the second respondent and his superiors are supposed to discharge the functions, does not authorize the on-the-spot collection of tax by coercion. The Act provides for assessment-provisional or final and the procedure therefor…"

In no other judgments, this authoritative pronouncement was either dissented or departed from.

11. The respondents seek to take shelter under certain observations made by this Court in the decisions rendered in ***S.R. Traders & Bhavani Traders v. The ACCT & Ors.,*** *[(1993) 17 APSTJ 125];* ***Kaki Butchi Raju Son v. State of A.P.,*** *[(1994) 19 APSTJ 19]*; ***Badrinath Oil Company v. Asst., Commissioner*** *[(1995) 21 APSTJ 28]*; ***Bharat Metals v. Special ACTO & Anr.*** *[(1998) 27 APSTJ 72],* and ***Sri Lakshmi Venkata Raghava Traders v. CTO (Int. & Enforcement Wing)*** *[W.P.No.10668/1993, dt.8-9-1993]*. A perusal of the said judgments, which are rendered by various Division Benches, discloses that, in none of them, any power for such a course of action was traced to

any provision.

12. In ***S.R. Traders & Bhavani Traders v. The ACCT & Ors.,*** *[(1993) 17 APSTJ 125]*, the question involved was as to the legality of simultaneous exercise of power by the regular department officials and by the vigilance cell. On finding that the defect, in this regard, which was pointed out in earlier judgments, was rectified through an amendment to Section 38, it was held that the concerned authority did possess the jurisdiction. However, the manner of exercise of power by such authority was not dealt with. In ***Badrinath Oil Company v. Asst., Commissioner*** *[(1995) 21 APSTJ 28]*, the grievance of the petitioners therein about the collection of tax by using undue influence and coercion, was negatived, on the ground that such matters need recording of evidence, and the same is impermissible in the proceedings under Article 226 of the Constitution of India. In ***Bharat Metals v. Special ACTO & Anr.*** *[(1998) 27 APSTJ 72]*, an order of compounding, even if alleged to have been passed by using threat and coercion, was held to be not justiceable, for the reason that it is not a demand notice. In an unreported decision in W.P.No.10668 of 1993, relied upon by the respondents, a Division Bench of this Court refused to interfere in such matter on the ground that the statements said to have been recorded by the respondents did not contain averment to the effect that it was obtained under coercion or undue influence. It was nothing but begging the question.

13. While levy of tax is prerogative of the State, a citizen cannot be required to pay tax, except where a specific provision exists for levy of the same. Inasmuch as the states prerogative to levy tax is almost unbridled, the only protection that can be accorded to a citizen is in the form of ensuring procedural safeguards. It is for this reason, that time and again Courts insisted that the provisions of taxation statutes have to be construed strictly. The law in this regard was aptly stated by Lord Cairns in ***Partington v. A.G*** *(1869) LR 4 HL 100*, as under:

> "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

In ***Sales Tax Commissioner v. Modi Sugar Mills*** *(AIR 1961 SC 1047)*, Justice Shah, as he then was, held as under:

> "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency".

14. There is no denial of the fact that in addition to the jurisdictional commercial tax authority, an officer of the rank of not less than Assistant Commercial Tax Officer, if empowered by the State, can exercise powers, in the matter of verification of records, account books, etc., of a dealer, to satisfy himself as to whether any turnover of a dealer has escaped tax. Extensive powers are conferred on such authority, in the matter of search and seizure. However, such special powers do not permit him to pass orders of assessment on the spot, much less to levy and collect tax instantaneously. As observed in the preceding paragraphs, the authority conferred with power under Section 28, has to fall back on Section 14, in the matter of issuance of notices, or passing orders, demanding tax or imposing penalty. The Learned Government Pleader is not able to draw the attention of this Court to any provision, which empowers such authorities to straightaway levy, as well as to collect the tax.

15. The stock reply by the respondents in all such cases has been that the dealers themselves have come forward with an offer to compound the offences. After referring to the manner in which the orders of compounding were passed, this Court took serious exception, to such practice, in ***B.Venkatappaiah Son & Co. v. Commercial Tax Officer*** *[(1973) 32 S.T.C.34]*. Further, by its very nature, compounding of offences is a phenomenon, which comes into play only where it emerges that the concerned person has committed the offence. Section 32 of the Act deals with the composition of offences. It reads as under:

> "(1) The prescribed authority may accept, from any person who has committed or is reasonably suspected of having committed an offence under this Act, by way of composition of such offence--

a. where the offence consists of the failure to pay on the evasion of any tax, recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding

three thousand rupees or double the amount of the tax recoverable, whichever is greater, and

b. in other cases a sum of money not exceeding three thousand rupees.

(2) Any order passed or proceeding recorded by the prescribed authority under sub-section (1) shall be final and no appeal or application for revision shall lie therefrom".

16. A reading of the same discloses that it is permissible for a person to offer for composition of offences, both when it is found that he is committed offence, or, where he is reasonably suspected to have committed the same. In either case, an order, fixing the liability to pay the tax has to exist. Liability to pay the tax, on the one hand, and liability to be punished for non-payment of the same are two different aspects. While the former ensues on account of non-payment of tax, irrespective of the reason therefor, the latter follows only when it is established that there was an intension on the part of the person concerned to evade the tax. In the context of sub-section (2) of Section 32, adding finality to orders compounding the offences, the prescribed authority is under obligation, to meticulously follow the procedure. Once an order holding a dealer liable to pay the tax is found to be *sine qua non,* before proceedings for compounding the offence are taken up, it is axiomatic that such orders shall conform to the procedure prescribed under Section 14.

17. For an order of compounding to ensue as a consequence and result of inspection, the following steps have to take place:

a. The inspection has revealed suppression of turnover, or other related irregularities.

b. The inspecting authority had issued a show cause notice, granting the time stipulated under the relevant provisions to the dealer to submit explanation as to why further action shall not be taken.

c. The dealer had submitted an explanation or has failed to submit the explanation within the stipulated time, even after receipt of notice.

d. An order of assessment is passed by the concerned authority, either because the dealer failed to submit the explanation within the stipulated time, or because the explanation offered by him is found not satisfactory.

e. After receiving the order of assessment/demand notice the dealer offers for compounding the offence, and

f. The concerned authority passes an order, accepting the offer.

It is after these stages that the occasion for payment of the concerned amount emerges. Further, it is not as if the arrears of tax or penalty, much less the compounding fee, are required to be paid on the same day, on which the order compounding the offence is passed. It is just unimaginable to think that, all the steps referred to above, starting from inspection of books and accounts, to collection of amount take place on the same day.

18. Therefore, the action of the respondents in demanding and collecting the amounts towards arrears of tax as well as compounding fee or penalty, as the case may be, on the same day is highly arbitrary, illegal and contrary to the provisions of the Act. In spite of remarks and observations having been made from time to time, by this Court, the practice has been continued. It only shows lack of regard on the part of the concerned respondents, to law. This Court cannot remain as a silent spectator for such blatant violations of the provisions of law.

19. For these reasons, the writ petitions are allowed. No costs.

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BILAL NAZKI, J.

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S. ANANDA REDDY, J.

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L. NARASIMHA REDDY, J

Dt. 27–01-2005.

Note:

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(B/O)

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COMMON ORDER: (Per Court)

In the light of the two separate judgments prepared by Mr. Justice S.Ananda Reddy and Mr. Justice L. Narsimha Reddy, the reference is answered with the following observations and directions,

i. Under the provisions of the Act and the Rules, the Officers of the Vigilance/Intelligence Wing of the Department can exercise the powers that are conferred, such as inspection of the business premises, books of accounts, stock verification etc., apart from recording any statement from any of the responsible person of the business concern;

ii. Basing on such information, if any of the officer of the said Vigilance or Intelligence Department is empowered to make assessments, such Officer can proceed to frame assessments basing on the material and such assessments could be completed only after complying the procedure provided under the provisions of the Act and the Rules, i.e., granting sufficient opportunity to adduce evidence by the dealer for the proposed assessment i.e., as to the quantities as well as valuation of the stocks etc; otherwise such material or information can be forwarded to the assessing authority having jurisdiction for taking appropriate action including the assessment, re-assessment etc.

iii. There shall be at least a gap of one week between the date of an order of assessment, or demand notice, as the case may be, and

an order compounding the offence, wherever the dealer comes forward with such an offer.

iv. The judgments in *S.R. Traders & Bhavani Traders v. The ACCT & Ors., [(1993) 17 APSTJ 125]; Kaki Butchi Raju Son v. State of A.P., [(1994) 19 APSTJ 19]*; *Badrinath Oil Company v. Asst., Commissioner [(1995) 21 APSTJ 28]*; *Bharat Metals v. Special ACTO & Anr. [(1998) 27 APSTJ 72],* and *Sri Lakshmi Venkata Raghava Traders v. CTO (Int. & Enforcement Wing) [W.P.No.10668/1993],* cannot be said to be the authorities for the proposition that the inspecting officials of the Commercial Tax Department are empowered to pass orders compounding the alleged offences on the same day of inspection and to collect the amount specified in such orders, on the same day.

v. After completion of the assessment, it is open to the department to issue a demand notice along with the assessment order by providing time as contemplated under the provisions of the Act for collection of the tax.

vi. If any penalty proceedings are initiated by the competent authorities, even such proceedings are to be completed after giving notice and sufficient opportunity to the dealer, and thereafter the penalty order could be served along with a notice of demand, giving sufficient time for payment of the amount of penalty, if levied.

vii. If the penalty proposed is unrelated to the assessment of the tax liability, such penalty could be levied independent of the assessment proceedings, but if penalty is related to the assessable tax, such penalty proceedings could be initiated and completed only after completion of the assessment and not before.

viii. The petitioners shall be refunded the amounts collected from them, or be provided with an option to agree for adjustment of the same towards payment of the tax in future.

ix. If the inspecting authorities are of the opinion that the books of account are required to be seized, they can do so only in accordance with the procedure contemplated under the Act and the Rules and not otherwise. Similarly even with reference to the seizure of the goods, the same is to be done as per the procedure provided, and in such cases, the dealer can also avail the benefit of getting the release of the goods on furnishing security as provided under the provisions of the Act and the Rules.

x. The Commissioner of Commercial Taxes is further directed to issue necessary circular to comply the directions of this Court by

all the concerned officers.

With these directions, the writ petitions are allowed. No costs.

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BN J.

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SARJ.

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LNRJ.

Dt.27.1.2005

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To

1. One fair copy to the Hon'ble Sri Justice Bilal Nazki (for his Lordship's kind perusal).

2. One fair copy to the Hon'ble Sri Justice S.Ananda Reddy (for his Lordship's kind perusal).

3. One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy (for his Lordship's kind perusal).

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6 The Commercial Tax Officer (Int) Kakinada.

7 The Deputy Commercial Tax Officer Rangireejupeta , Rajahmundry.

8 The Commercial Tax Officer Kothapet , Vijayawada.

9 Commercial Tax Officer
Gandhi Chowk , Tenali , Guntur Dist.
10 Spl.Assistant Commercial Tax Officer
Gandhi Chowk , Tenali , Guntur Dist.

11 Commercial Tax Officer (Int).
Vijayawada.

12 The Assistant Commercial Tax Officer
Aryapuram , Rajahmundry.

13. Asst. Commercial tax Officer (Int)
Puttur , Chittoor Dist.

14. The Assistant commissioner Commercial Taxes, Intelligence No. III
(Enforcement Wing). Hyderabad

15 The Secretary, Revenue Department,

The State of A.P., Secretariat Bldgs., Hyderabad

16. The Assistant Commercial Tax Officer,
Kasibugga Circle, Srikakulam Dist.

17. The Deputy Commercial Tax Officer., Tekkali Circle.,

Srikakulam District.

18. The Commercial Tax Officer, Gudivada Circle, Krishna Dist

19. The Commercial Tax Officer (Audit),

o/o the Dy. Commissioner of Commercial Taxes, Kurnool.
20. The Deputy Commissioner of Commercial Taxes,

Kurnool Division, Kurnool.
21. The Asst. Commercial Tax Officer, Uravakonda, Kurnool.

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THE HON'BLE MR. JUSTICE BILAL NAZKI

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

THE HON'BLE MR. JUSTICE L. NARSIMHA REDDY

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WRIT PETITION NO : 15225 of 1991 & Batch

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